

2005 DRAFTING REQUEST

Bill

Received: 05/03/2005

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Terese Berceau (608) 266-3784

By/Representing: Tom Powell

This file may be shown to any legislator: NO

Drafter: mkunkel

May Contact:

Addl. Drafters:

Subject: Fin. Inst. - WCA

Extra Copies: CTS

Submit via email: YES

Requester's email: Rep.Berceau@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Remedies for violation of Wisconsin Consumer Act; penalty for fraudulent misrepresentations

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							State
/1	mkunkel 05/20/2005	wjackson 05/23/2005	rschluet 05/23/2005		sbasford 05/23/2005	mbarman 05/23/2005	

FE Sent For:

<END>

→ At Intro.

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/?	mkunkel						
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11 wj 5/23

5/23/05 pb

FE Sent For:

<END>

Kunkel, Mark

From: Powell, Thomas
Sent: Tuesday, May 17, 2005 11:08 AM
To: Kunkel, Mark
Subject: RE: A simple bill request

Mark,
Yes, please do that. Restitution before Forfeiture.

Tom

From: Kunkel, Mark
Sent: Tuesday, May 17, 2005 10:49 AM
To: Powell, Thomas
Subject: RE: A simple bill request

Tom:

Regarding the restitution, do you want to also create something comparable to the following?

Section 100.264 (3): "Priority for restitution. If the court orders restitution under s. [statutory cross references] for a pecuniary or monetary loss suffered by a person, the court shall require that the restitution be paid by the defendant before the defendant pays any forfeiture imposed under this section."

You could create something similar in s. 426.301, if you want. Let me know.

-- Mark

-----Original Message-----

From: Powell, Thomas
Sent: Monday, May 16, 2005 4:37 PM
To: Kunkel, Mark
Subject: RE: A simple bill request

Thanks very much, Mark

From: Kunkel, Mark
Sent: Monday, May 16, 2005 4:24 PM
To: Powell, Thomas
Subject: RE: A simple bill request

Tom:

Sorry about the delay. I'll try to get it into editing tomorrow. I'll email you tomorrow and let you know more exactly when you can expect to receive it.

-- Mark

-----Original Message-----

From: Powell, Thomas
Sent: Monday, May 16, 2005 10:10 AM
To: Kunkel, Mark
Subject: RE: A simple bill request

Mark,
Are you close to finishing this bill draft?

Thanks,
Tom Powell

From: Kunkel, Mark
Sent: Tuesday, May 03, 2005 11:51 AM
To: Powell, Thomas
Subject: RE: A simple bill request

Okay, I'll get this done fairly soon.

-----Original Message-----

From: Powell, Thomas
Sent: Tuesday, May 03, 2005 11:50 AM
To: Kunkel, Mark
Subject: A simple bill request

Mark,

Since you drafted our previous bill increasing penalties of the Wisconsin consumer act, Rep. Berceau would like another bill drafted that does the following:

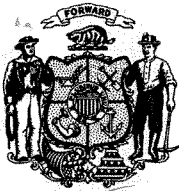
- 1) Amend Wis. Stat. 100.26(4) so that persons who violate Wis. Stat. 100.18 are subject to a civil forfeiture of not less than \$100, nor more than \$10,000.
- 2) Amend Wis. Stat. 426.301(1) to include restitution in the remedies the administrator can recover in a civil action for violations of the Wisconsin consumer act.

If you have any questions, please feel free to drop me a line.

Thanks so much,

Tom Powell

Research Assistant for Rep. Terese Berceau



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2954/1

MDK:1/....

WLj

BH MONDAY
5/23

2005 BILL

- 1 AN ACT ^{Gen}...; relating to: civil forfeitures for certain fraudulent representations,
2 deceptive advertising, and violations of the Wisconsin Consumer Act and
3 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Agriculture, Trade and Consumer *
Protection enforces certain prohibitions against fraudulent representations and
deceptive advertising. A person who violates such a prohibition may be subject to
a civil forfeiture. The amount of the civil forfeiture depends on the prohibition
violated. In general, the civil forfeiture is not less than \$50 nor more than \$200 for
each violation. However, for a violation of a prohibition regarding business location
misrepresentations, the civil forfeiture is not less than \$100 nor more than \$10,000
for each violation. This bill provides that the civil forfeiture for any of the foregoing
violations is not less than \$100 nor more than \$10,000 for each violation. (The bill
does not affect a criminal penalty under current law that applies to violations of a
prohibition regarding schemes not to sell, purchase, hire, use, or lease merchandise,
real estate, securities, service, or employment as advertised.)

Also under current law, the Wisconsin consumer act (WCA) regulates credit *
transactions that are entered into for personal, family, or household purposes and in *
which the amount financed is \$25,000 or less. A person who violates the WCA may
be subject to a civil forfeiture of not less than \$100 and not more than \$1,000 for each
violation. This bill allows a court, in addition to imposing a civil forfeiture, to award
restitution to any person suffering loss because of such a violation. If a court orders

BILL

restitution under the bill, the court must require that the defendant pay the restitution before paying any forfeiture that is imposed.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.26 (4) of the statutes is amended to read:

2 100.26 (4) Any person who violates s. ~~100.18 (1) to (8) or (10) or~~ 100.182 is
3 subject to a civil forfeiture of not less than \$50 nor more than \$200 for each violation.

History: 1975 c. 39; 1979 c. 327; 1981 c. 90; 1981 c. 124 s. 9; 1983 a. 500; 1985 a. 288; 1989 a. 31; 1993 a. 414; 1995 a. 27; 1997 a. 55, 111, 201, 253, 283; 1999 a. 32; 2001 a. 16, 109.

4 **SECTION 2.** 100.26 (4m) of the statutes is amended to read:

5 100.26 (4m) Any Except as provided in sub. (5), any person who violates s.
6 100.18 ~~(10r)~~ is subject to a civil forfeiture of not less than \$100 nor more than \$10,000
7 for each violation.

History: 1975 c. 39; 1979 c. 327; 1981 c. 90; 1981 c. 124 s. 9; 1983 a. 500; 1985 a. 288; 1989 a. 31; 1993 a. 414; 1995 a. 27; 1997 a. 55, 111, 201, 253, 283; 1999 a. 32; 2001 a. 16, 109.

8 **SECTION 3.** 426.301 (1) of the statutes is amended to read:

9 426.301 (1) The administrator may recover in a civil action from a person who
10 violates chs. 421 to 427 and 429 or any rule made pursuant to any authority granted
11 in chs. 421 to 427 and 429, a civil penalty of not less than \$100 and not more than
12 \$1,000 for each violation. The court may award restitution when appropriate to any
13 person suffering loss because of such violations if proof of such loss is submitted to
14 the satisfaction of the court. If the court orders restitution, the court shall require
15 the defendant to pay the restitution before the defendant pays any forfeiture imposed
16 under this subsection.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

17 **SECTION 4. Initial applicability.**

(END)

Emery, Lynn

From: Powell, Thomas
Sent: Monday, May 23, 2005 2:39 PM
To: LRB.Legal
Subject: Draft review: LRB 05-2954/1 Topic: Remedies for violation of Wisconsin Consumer Act; penalty for fraudulent misrepresentations

It has been requested by <Powell, Thomas> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-2954/1 Topic: Remedies for violation of Wisconsin Consumer Act; penalty for fraudulent misrepresentations